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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,528	06/23/2000	HORST FARBER	21543	9899
535	7590	01/15/2004	EXAMINER	
THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900			FONTAINE, MONICA A	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/603,528	FARBER, HORST
	<b>Examiner</b>	<b>Art Unit</b>
	Monica A Fontaine	1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 10 October 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,2 and 4-9 is/are pending in the application.
  - 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4 and 5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 June 2000 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

This office action is in response to the amendment filed 10 October 2003.

The following rejections have been overcome by the amendment:

- A. 35 USC 102(b) as anticipated by Guest (U.S. Patent 5,038,455): Claim 1
- B. 35 USC 103(a) over Klimaszewski, Jr. (U.S. Patent 3,929,943): Claim 1
- C. 35 USC 103(a) over Guest, in view of Huang (U.S. Patent 6,179,153): Claims

2-5

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Berger et al. (U.S. Patent 3,895,634). Regarding Claim 1, Berger et al., hereafter “Berger,” show that it is known to carry out a method of making a tube (Abstract; It is noted that the recitation “a...tube especially to receive a biological sample” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190

USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).), comprising the steps of injection molding an intermediate tube in one piece with a cylindrical wall and an intermediate bottom spaced between ends thereof (Figure 5; Column 6, lines 31-58), heating an end of said intermediate tube and pressing edges of said end inwardly toward an axis of said intermediate tube to thermally reform said tube and provide at least a partial bottom end for the sample tube (Figures 5 and 6; Column 8, lines 23-37), and rounding the bottom end of the sample tube outside an injection mold in which said tube is formed by pressing a heated stamp thereagainst to cause said bottom end of said sample tube to be shaped to the concavity of a concave recess of said stamp (Figure 6; Column 8, lines 23-37).

Regarding Claim 2, Berger shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein said intermediate bottom is given a conical shape during the injection molding thereof (Column 6, lines 63-68; Column 7, lines 1-7).

Regarding Claim 4, Berger shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the bottom of said tube is only partly closed by said stamp (Figures 4 and 6).

Regarding Claim 5, Berger shows the process as claimed as discussed in the rejection of Claims 1 and 4 above, including a method wherein said stamp heats said intermediate tube to a temperature at least equal to the flow temperature of a thermoplastic synthetic resin constituting said intermediate tube (Column 8, lines 23-37).

***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 4, and 5 have been considered but are moot in view of the new ground(s) of rejection (specifically, the limitation "rounding the bottom end of the sample tube outside an injection mold").

***Conclusion***

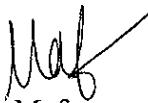
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica A Fontaine whose telephone number is 571-272-1198. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Colaianni can be reached on 703-305-5493. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Maf  
January 6, 2004



MICHAEL COLAIANNI  
PRIMARY EXAMINER